DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
Silver Spring MD 20993

TO: The Secretary
Through: DS_____
COS_____
ES_____

FROM: Commissioner of Food and Drugs

SUBJECT: Annual Financial Report to Congress Required by the Prescription Drug User Fee Amendments of 2007

BACKGROUND

The Prescription Drug User Fee Act of 1992 (PDUFA), as amended, requires an annual financial report to Congress. This report covers fiscal year (FY) 2009. Attached are the annual financial report to Congress and transmittal letters to Congress for your signature.

HIGHLIGHTS

The report describes how FDA met specific statutory conditions during FY 2009. The report's statements and tables provide information on the user fee revenues and expenditures in FY 2009, the carryover balance, and comparative data for earlier periods.

In FY 2009, FDA collected $519 million in fees, including fees collected for earlier periods. This is slightly more than the $511 million FDA projected at the beginning of the year when fees for FY 2009 were established. The higher revenue is attributable to the receipt of additional FY 2008 product fees and establishment fees in the first quarter of FY 2009.

In FY 2009, FDA obligated $512 million from PDUFA fee revenues. This accounted for about 60 percent of all funds obligated by FDA from all sources in support of the process for the review of human drug applications. This $512 million was about $7 million less than net collections for the year, increasing the balance of funds collected and appropriated in previous years, and still available for obligation, to $172 million at the end of FY 2009. Of this $172 million, there are commitments for all but about $34 million. About 60 percent of funds obligated from all sources were for employee salaries and benefits, and the balance was for costs necessary to support and maintain those employees.

RECOMMENDATION

I recommend that you review and approve the report and forward it to Congress.

Margaret A. Hamburg, M.D.

Attachments (2)
Tab A – Transmittal Letters
Tab B – Report to Congress

THE SECRETARY OF HEALTH AND HUMAN SERVICES

WASHINGTON, D.C. 20201

August 12, 2010

The Honorable Joseph R. Biden, Jr.
President of the Senate
United States Senate
Washington, DC 20510

Dear Mr. President:

The Prescription Drug User Fee Act of 1992 (PDUFA), as amended, requires an annual financial report to Congress. Please find enclosed the Fiscal Year 2009 report which documents how the Food and Drug Administration (FDA) met each of the necessary conditions specified in PDUFA for continued collection of prescription drug user fees. Availability of these fees enables FDA to strengthen its drug review process and meet the performance goals established for this program.

I look forward to working together with you to ensure that the Food and Drug Administration has appropriate funding to fulfill its important public health and consumer protection mandates.

Sincerely,

Kathleen Sebelius

Enclosure

FY 2009 PDUFA FINANCIAL REPORT

REQUIRED BY THE

PRESCRIPTION DRUG USER FEE ACT

AS AMENDED

FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

EXECUTIVE SUMMARY

The Prescription Drug User Fee Amendments of 2007 require the Food and Drug Administration (FDA or the agency) to report annually on the financial aspects of its implementation of the Prescription Drug User Fee Act (PDUFA), as amended. This report covers fiscal year (FY) 2009.

PDUFA specifies that the following three conditions must be satisfied each year in order for FDA to collect and spend PDUFA fees:

1. FDA's overall Salaries and Expenses Appropriation, excluding fees, must exceed FDA's overall FY 1997 salaries and expenses appropriation, excluding fees and adjusted for inflation.
2. Fee revenues collected must be specified in Appropriation Acts.
3. FDA must spend at least as much from appropriated funds for the review of human drug applications as it spent in FY 1997, adjusted for inflation, within certain tolerances.

This report describes how FDA met those specific statutory conditions during FY 2009. The statements and tables included in this report also provide the user fee revenues and expenditures in FY 2009, the carryover balance, and comparative data for earlier periods.

In FY 2009, FDA collected $519 million in fees, including fees collected for earlier periods. This is slightly more than the $511 million FDA projected at the beginning of the year when fees for FY 2009 were established. The higher revenue is attributable to the receipt of additional FY 2008 product fees and establishment fees in the first quarter of FY 2009.

In FY 2009, FDA obligated $512 million from PDUFA fee revenues. This accounted for about 60 percent of all funds obligated by FDA from all sources in support of the process for the review of human drug applications. This $512 million was about $7 million less than net collections for the year, increasing the balance of funds collected and appropriated in previous years, and still available for obligation, to $172 million at the end of FY 2009. Of this $172 million, there are commitments for all but about $34 million. About 60 percent of funds obligated from all sources were for employee salaries and benefits, and the balance was for costs necessary to support and maintain those employees.

Challenges facing FDA in FY 2010 include meeting expanded post-market safety responsibilities and regulating industry operations that are increasingly expanding to more distant, foreign-based clinical trials and manufacturing. The rapidly expanding information technology and information management environment and its security requirements are also placing increasing demands on this program. And in FY 2010, FDA will need to start activities required to initiate the process of the next reauthorization of PDUFA. PDUFA funding is essential to FDA's ability to operate its human drug review program and to respond to these challenges.

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BACKGROUND

Enacted in 1992, PDUFA authorized FDA to collect fees from the pharmaceutical industry to be spent on drug review, in addition to minimum amounts that must continue to be spent from appropriations. FDA used these additional resources to hire and support additional staff for the review of human drug applications, so that safe and effective drug products would reach the American public more quickly. PDUFA was a very successful program. With the support of the pharmaceutical industry, other stakeholders, and the Administration, Congress amended and extended PDUFA in 1997 (PDUFA II), 2002 (PDUFA III) and 2007 (PDUFA IV).

Under PDUFA IV, application fees, establishment fees, and product fees each contribute one-third of the total fee revenues in a fiscal year. An application fee must be submitted when certain New Drug Applications (NDAs) or Biologic License Applications (BLAs) are submitted. Product and establishment fees are due annually on October 1. The total annual fee revenue amounts set in statute for PDUFA IV, after a base workload adjustment, must be adjusted for annual changes in drug review workload for cumulative inflation since FY 2008. PDUFA IV authorizes FDA to set user fees in each fiscal year, so that the total revenue that FDA receives from each fee category (application fees, product fees, and establishment fees) approximates one-third of the estimated revenue amount after adjustments for workload and inflation.

PDUFA IV also requires FDA to submit two reports to Congress each fiscal year. A performance report is to be sent within 60 days after the end of a fiscal year, and a financial report is to be sent within 120 days. The FY 2009 PDUFA Performance Report, which discusses FDA's progress in meeting the goals set for FDA in PDUFA IV, is being transmitted separately to Congress. This report is FDA's FY 2009 PDUFA Financial Report, covering the period from October 1, 2008 to September 30, 2009.

As required by the statute, this report presents the legal conditions that must be satisfied before FDA can collect and spend the fees, and the calculations on how these conditions were met in FY 2009. This report also presents summary statements of FY 2009, earned revenue by fee source, and fee obligations by expense category. Finally, this report also presents the total costs in FY 2009, from both fee revenues and appropriations, of the process for the review of human drug applications, as defined in PDUFA.

MEETING THE LEGAL CONDITIONS FOR USER FEES IN FY 2009

PDUFA imposes three legal conditions that FDA must satisfy each year before the agency may collect and spend user fees. The calculations on how these conditions were met in FY 2009 are summarized below and are explained in greater detail in Appendix A.

The **first condition** is that FDA's overall Salaries and Expenses Appropriation (excluding user fees) must meet or exceed FDA's overall FY 1997 Salaries and Expenses Appropriation (excluding user fees and adjusted for inflation). In FY 2009, FDA's overall Salaries and Expenses Appropriation (excluding user fees and excluding rent to the U.S. General Services Administration (GSA), which was also not included in the FY 1997 Appropriation amount) totaled $1,883,539,000. FDA's FY 1997 total Salaries and Expenses Appropriation (excluding user fees) multiplied by the FY 2009 adjustment factor as required by the statute, and rounded to the nearest thousand dollars, was $1,082,258,000. Therefore, since the FY 2009 appropriated amount is greater, the first condition was met.

The **second condition** is that the amount of user fees collected in each year must be specified in Appropriation Acts. The President signed the FY 2009 Omnibus Appropriations Act (Public Law 111-8) specifying amounts collectable from fees during FY 2009 on March 11, 2009. It provided for $510,665,000 to come from prescription drug user fees. The Appropriation Act specified that the fees collected could remain available until expended. Thus, the second condition was met.

The **third condition** is that FDA may collect and spend user fees only in years when FDA also uses a specified minimum amount of appropriated funds for the review of human drug applications. The specified minimum is the amount FDA spent on the review of human drug applications from appropriations (exclusive of user fees) in FY 1997, adjusted for inflation. That amount, adjusted for inflation for FY 2009 and rounded to the nearest thousand dollars, is $195,288,000. In FY 2009, FDA obligated $343,374,894 from appropriated funds for the process for the review of human drug applications. Since this amount exceeds the specified minimum amount, the third condition has been met.

Appendix A provides more detailed calculations and explanations of how FDA met each of these three statutory conditions.

USER FEE REVENUES

PDUFA IV specifies that FDA shall collect fee revenues from establishment, product, and application fees. The statute specifies revenue amounts for each of these categories and specifies that the statutory amounts are to be adjusted in each fiscal year for inflation, workload, and statutory drug safety increases. FDA then establishes fees at the beginning of each fiscal year so that the total revenue collected approximates the adjusted statutory total fee amount.

Under PDUFA, fees collected and appropriated, but not spent by the end of a fiscal year, continue to remain available for FDA to spend in future fiscal years. The balances carried over from year to year are described in the section on carryover balances beginning on page 7.

The following table provides a breakout of user fees collected by fee category during the past two fiscal years, and also reflects estimates of receivables.

FOOD AND DRUG ADMINISTRATION
STATEMENT OF PDUFA USER FEE REVENUES BY FEE SOURCE
As of September 30, 2009

Fiscal Year	FY 2008	FY 2009
Fees Collected:		
Application Fees	$154,164,400	$182,835,800
Establishment Fees	$168,357,952	$174,483,232
Product Fees	$157,763,524	$155,917,120
TOTAL FEES COLLECTED:	**$480,285,876**	**$513,236,152**
Fee Receivables:		
Application Fees	$281,800	$34,900
Establishment Fees	$589,050	$638,400
Product Fees	$195,090	$643,680
TOTAL FEES RECEIVABLE:	**$1,065,940**	**$1,316,980**
Total User Fee Revenues:	**$481,351,816**	**$514,553,132**

Note that user fee revenues are reported in the year the fee was originally due—referred to as cohort years. For example, a fee due in FY 2008, even if it is received in FY 2009, is attributed to FY 2008 revenues. Totals reported for each year are net of any refunds for that year.

FDA bills the uncollected fees twice a year – August and November. In order to ensure the quality of the information provided in this financial report, FDA updates prior year numbers each year.

OBLIGATION OF USER FEE REVENUES

User fee revenues are expended only for costs necessary to support the process for the review of human drug applications, as defined in PDUFA. Allowable and excludable costs for the process of the review of human drug applications are defined in Appendix C. In FY 2009, FDA obligated $512,051,400 from user fee revenues.

FOOD AND DRUG ADMINISTRATION
STATEMENT OF PDUFA FEE OBLIGATIONS BY EXPENSE CATEGORY
As of September 30, 2008 and 2009

Expense Category	FY 2008	FY 2009
Personnel Compensation and Benefits	$247,753,981	$317,836,710
Travel and Transportation	$6,753,378	$4,903,162
Rent	$12,682,864	$20,893,636
Communications	$9,203,524	$13,477,913
Contract Services	$160,945,543	$132,439,531
Equipment and Supplies	$12,592,575	$21,891,912
Other	$854,970	$608,536
TOTAL OBLIGATIONS:	**$450,786,835**	**$512,051,400**

FDA dedicated 1,277 staff years to the review of human drug applications in FY 1992, before PDUFA was enacted. (In this report the time worked by one full time person for one year is referred to as either a "staff year" or as a "full-time-equivalent" (FTE).) FDA conducted a time reporting study in 1993 to determine the percentage of time each organizational component devoted to user fee-related activities. The data from this study allowed FDA to calculate the personnel-related costs of the drug review process. The percentages are updated regularly through additional time surveys, which parallel the method used by independent consultants in FY 1993. More detailed information about the development of the costs associated with the review of human drug applications can be found in Appendix D.

In FY 2009, PDUFA fees and appropriations paid for a total of 3,526 staff years, 2,249 more staff years than were used in FY 1992 for the review process of human drug applications, before user fees were authorized. Employee salary and benefits paid from user fees in FY 2009 totaled over 60 percent of the obligations from fees. This includes all pay and benefits for the additional personnel.

In FY 2009, FDA completed significant steps in the development of new systems or consolidation of legacy information systems. The following were the most significant:

The Enterprise Architecture (EA) team developed the IT Investment Management (ITIM) process to govern all of the FDA IT investments so that they advance towards the target architecture. A governance framework enables the standardized evaluation, prioritization, and processing of requests for IT investments, products and services. The ITIM process aligns to related Federal and HHS defined processes such as the Capital Planning and

Investment Control (CPIC), the Federal Enterprise Architecture (FEA), and the HHS Enterprise Architecture Repository (HEAR).

New IT requests are also reviewed for Enterprise Information Management (EIM) alignment, prioritized, and reviewed through a standardized assessment for all new IT investments. Major initiatives are added to the end-state solution architecture and the EIM roadmap to document and monitor the project as it is defined and implemented. As the scope and needs of the agency change, these projects will influence the EIM vision through its Strategic Capabilities and Building Blocks so that the vision is continually updated as well, to reflect changes within the FDA.

The EA work provides a comprehensive enterprise architecture, a defined target state, and a governance process for ensuring that IT investments match business needs and the strategic goals of the organization.

Through the organizational restructuring efforts, the Office of Information Management (OIM) has worked through challenges bringing the different IT offices together to support not only enterprise initiatives, but also maintain support for the current Center and Office systems. Initial work is underway to evaluate the various standards, technologies and platforms with the goal of defining a target system framework. OIM also created standard operating processes to prioritize the development of common functional IT components. As part of the common components framework initiatives, a repository was developed to house and make available common components code, documents, and associated implementation guidance for systems to develop in a consistent way.

Additionally, as part of the migration process to the new data centers, work is focused on documenting common processes and components, and testing target architecture assumptions. Among many aspects, common services include centralized documentation, policy, standard operating procedures, technology, components, configuration management, security, governance, and issue tracking.

As of June 1, 2009, the FDA no longer accepts drug registration and listing information in paper format without a waiver. This decreases paper reviews and supplements the electronic requirements associated with Structured Product Labeling (SPL). FDA has worked diligently to ensure information, assistance, training, and vendor education is available and offers best practices to regulated parties to increase the success rate of electronic submissions. In FY 2009, the IT-related guidance, *Providing Regulatory Submissions in Electronic Format – Drug Establishment Registration and Drug Listing* (5/28/09), was published in final form. This guidance was published to assist regulated parties in submitting registration and listing information in electronic format. As of September 30, 2009, no waivers have been granted.

Information and Computing Technologies for the 21st Century (ICT21) provides an agency-wide computing environment for the 21st century that is efficient, effective, scalable, flexible, reliable, and meets the FDA business requirements. The successful delivery of these objectives will enable the FDA to create a secure infrastructure, with improved service, response times, and overall performance.

The FDA has successfully designed and prepared for two new data centers, one for development and testing, and another for pre-production and production data. The pre-production environment will allow for more testing and collaboration with the regulated industry as IT systems evolve. In conjunction with the development of the new data centers, OIM has also defined and implemented a centralized security program, allowing for better oversight of both the networks and environments.

CARRYOVER BALANCES

Under PDUFA, fees collected and appropriated but not obligated by the end of a fiscal year continue to remain available to FDA in future fiscal years. These revenues are referred to as carryover balances. The net result of operations in FY 2009 increased the carryover balances by $6,941,251. Much of this increase was the result of receiving additional FY 2008 fees in the first quarter of FY 2009.

The table below captures the changes in carryover balances from FY 1993.

FOOD AND DRUG ADMINISTRATION
STATEMENT OF COLLECTIONS, OBLIGATIONS, AND CARRYOVER BALANCES BY FISCAL YEAR
As of the end of each fiscal year shown, and not including payments for next fiscal year

Fiscal Year	Beginning Carryover	Net Collections	Fee Revenue Obligations	Year-End Carryover
1993	-	$28,531,996	$8,949,000	$19,582,996
1994	$19,582,996	$53,730,244	$39,951,020	$33,362,220
1995	$33,362,220	$70,953,500	$74,064,015	$30,251,705
1996	$30,251,705	$82,318,400	$85,053,030	$27,517,075
1997	$27,517,075	$93,234,125	$84,289,046	$36,462,154
1998	$36,462,154	$132,671,143	$101,615,000	$67,518,297
1999	$67,518,297	$126,580,456	$122,515,000	$71,583,753
2000	$71,583,753	$133,060,339	$147,276,000	$57,368,092
2001	$57,368,092	$138,761,294	$160,713,000	$35,416,386
2002	$35,416,386	$149,078,939	$161,812,100	$22,683,225
2003	$22,683,224	$209,667,051	$200,154,500	$32,159,776
2004	$32,195,776	$251,617,821	$232,081,500	$51,732,097
2005	$51,732,097	$283,491,495	$269,433,800	$65,789,792
2006	$65,789,792	$315,502,786	$305,644,137	$75,648,440
2007	$75,648,440	$375,597,273	$320,429,620	$130,816,093
2008	$130,816,093	$485,165,229	$450,786,835	$165,194,487
2009	$165,194,487	$518,992,651	$512,051,400	$172,135,738
2010	$172,135,738			

The balances above reflect cumulative cash at the beginning/end of each fiscal year, and the net cash collected during each fiscal year for all cohort years, but do not reflect any cash received for future fiscal year cohorts. The figures do not include accounts receivable. The net collections balance shown above for FY 2009 of $518,992,651 is greater than the FY 2009 cohort year collections balance on page three ($513,236,152). This is because the FY 2009 net collections figure above also includes some prior years' receivables that FDA collected in FY 2009.

There are also a number of claims on these carryover funds, as explained on the following page.

COLLECTION CEILINGS, POTENTIAL REFUNDS AND OFFSETS

PDUFA I prohibited FDA from keeping fees in excess of the amount specified in appropriations (collection ceiling) each fiscal year through FY 1997. Amounts collected that exceeded collection ceilings through FY 1997 were required to be refunded. A total of $6.3 million surplus collections from this period were refunded in FY 2000 and FY 2001.

Under PDUFA II and III, collections in excess of fee amounts appropriated after FY 1997 may be kept and used to reduce fees that would otherwise be assessed in a later fiscal year. The first such offset (for excess collections in 1998 and 2004) was made when fees were set for FY 2007, as reflected in the table below. At the time fees were set for FY 2007 (August 2006), there were no excess collections for other years. Collections since then have resulted in additional excess collections.

Under the provisions of PDUFA IV, if cumulative collections through FY 2010 and estimated for FY 2011 exceed cumulative fee appropriations for the same period, FDA will reduce fees when fees are set for FY 2012 by the cumulative amount by which fees collected over this period exceed fees appropriated over the same period.

The following table depicts the net collections, the collection amounts specified in appropriations, and the amounts that FDA may have to use to offset future collections in FY 2012.

FOOD AND DRUG ADMINISTRATION
STATEMENT OF FEES COLLECTED, COLLECTION CEILINGS, AND POTENTIAL REFUNDS
As of September 30, 2009

Fiscal Year	Collections Realized	Collection Ceiling	Potential Offset to Future Collections
1998	$117,849,016	$117,122,000	$727,016
1999	$125,729,367	$132,273,000	-
2000	$141,134,682	$145,434,000	-
2001	$138,421,429	$149,273,000	-
2002	$141,408,975	$161,716,000	-
2003	$218,302,684	$222,900,000	-
2004	$258,333,700	$249,825,000	$8,508,700
2005	$287,178,231	$284,394,000	$2,784,231
2006	$313,659,988	$305,332,000	$8,327,988
2007	$370,934,966	$352,200,000	$18,734,966
2008	$480,285,876	$459,412,000	$20,873,876
2009	$513,236,152	$510,665,000	$2,571,152
		Total:	**$62,527,929**
Amount offset when fees for FY 2007 were set			$7,957,922
Balance remaining to be offset when FY 2012 fees are set			**$54,570,007**

RESERVE FOR REFUNDS AND OFFSET FOR FUTURE COLLECTIONS

Total fees collected exceeded the appropriations limit in FY 1998, and in FY 2004 through FY 2009, by the amounts shown in the table above, $62,527,929. Beginning with PDUFA IV (FY 2008), if fees collected are less than fees appropriated in any year, the amount less than the amount appropriated is to be treated as a reduction in cumulative appropriations. When FDA set fees for FY 2007 in August 2006, the amount of fees established for FY 2007 was offset by $7,957,922 of collections in excess of appropriations. A total of $54,570,007 remains to be offset. Under PDUFA IV, an offset will be made at the time when fees are set for FY 2012 for the cumulative amount of excess collections through FY 2010 and projected through FY 2011. In the meantime, this $54,570,007 must be held in reserve for an offset in FY 2012, unless collections in the years from FY 2009 through FY 2011 should fall below amounts appropriated for user fees in those years. The amount to be held in reserve for future offset will be recalculated in the annual financial report each year.

OTHER RESERVES AND BALANCE AVAILABLE FOR ALLOCATION

The table below provides a summary of carryover balances as of September 30, 2009, and anticipated claims on those balances. The first line shows a reserve of $2,500,000 for refunds of fees paid. The second line sets forth the amount collected in excess of appropriations through FY 2010, which FDA may have to use as an offset against fees collected in excess of appropriations when fees for FY 2012 are established in August 2011. The third line sets aside funds to be paid from PDUFA fees for the move of CBER components to White Oak in the future. The fourth line shows the cost through 2012 of additional FTE allocated in 2009 to cope with increased PDUFA workload. The fifth line shows the amount of carryover balances available for allocation after these four set-asides.

Due to a change in PDUFA requiring establishment and product fees to be paid for FY 2003 and subsequent years by the first of the fiscal year, FDA no longer needs to have a 3-month reserve for future operations at the end of each fiscal year—at least until the end of FY 2012. FDA currently estimates that it will need to obligate about $64.2 million per month in FY 2013 to sustain FY 2012 operations. The carryover amount shown as available for allocation in the table below ($33,686,731) is enough to fund estimated FY 2013 operations for approximately 0.5 months.

FOOD AND DRUG ADMINISTRATION
SUMMARY STATEMENT OF CARRYOVER BALANCE
As of September 30, 2009

Status of Carryover Funds	Amount
Reserve for Refunds	$2,500,000
Reserve for Future Collection Offset	$54,570,007
Reserve for CBER move to White Oak	$37,896,000
Allocation of Additional 53 FTE, FY 2010-2012	$43,483,000
Available for Allocation	$33,686,731
TOTAL Carryover Balance	**$172,135,738**

TOTAL COSTS OF THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

The following table presents the costs for the review of human drug applications for FY 2008 and FY 2009 by organizational components. It indicates the full cost of the process for the review of human drug applications, including costs paid both from appropriations and from user fee revenues. The amounts are based upon the obligations recorded at the end of each fiscal year. In the past, over 81 percent of amounts obligated are expended within 1 year, and 96 percent within 2 years. Thus, obligations represent an accurate measure of costs.

FOOD AND DRUG ADMINISTRATION
PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS – TOTAL COSTS
As of September 30, 2009

FDA Component	FY 2008	FY 2009
Center for Drug Evaluation and Research (CDER)	$493,748,819	$585,414,578
Center for Biologics Evaluation and Research (CBER)	$145,080,623	$170,363,705
Field Inspection and Investigation Costs (ORA)	$27,811,039	$36,509,080
Agency General and Administrative Costs (OC)	$47,259,909	$63,138,931
Total Process Costs	**$713,900,390**	**$855,426,294**
Amount from Appropriations	$263,113,555	$343,374,894
Amount from Fees	$450,786,835	$512,051,400

Of the total of $855,426,294 obligated in support of the process for the review of human drug applications as defined in PDUFA in FY 2009, about 60 percent came from PDUFA fees and about 40 percent came from appropriations. The costs for all components increased in FY 2009. The increases in expenditures primarily reflects the fact that in FY 2009 FDA used a total of 3,526 FTE for the process for the review of human drug applications, about 600 more FTE than the 2,926 FTE utilized by FDA in FY 2008. Most of this increase reflected FDA's success in hiring or reassigning employees to work in support of the process of the review of human drug applications. A portion of the cost increase is due to mandatory pay increases for all Federal employees and increased employee benefit costs.

MANAGEMENT CHALLENGES FOR FY 2010

Since the implementation of PDUFA I, FDA has utilized PDUFA resources to significantly reduce the time it takes to evaluate new drugs without compromising the FDA's rigorous standards for safety and efficacy. This has allowed the American people to gain quicker access to valuable therapies and has increased the economic incentive for sponsors to develop innovative drug and biological products. Without the funds derived from PDUFA fees, the substantial progress FDA has achieved in improving and expediting the review of human drug applications would not have been possible.

PDUFA IV enters its third year in FY 2010. Re-authorized as Title I of the Food and Drug Administration Amendments Act of 2007 (FDAAA), PDUFA IV expands user fee funding to cover post-market safety activities. FDAAA also expanded requirements under the re-authorized Pediatric Research Equity Act (Title IV) and the Best Pharmaceuticals for Children Act (Title V). In addition, FDAAA Title IX gave FDA substantially expanded responsibilities and authorities regarding the post-market safety of drugs. For example, FDA can now require risk evaluation and mitigation strategies for approved drug products, require sponsors to conduct post-market studies and clinical trials, and require safety labeling changes to address new safety information for marketed drugs. FDA is also tasked with developing systems capable of performing active post-market risk identification and analysis. These new provisions greatly strengthen FDA's ability to perform its mission of ensuring the availability of safe and effective drugs and biologics, but they also place increasing workload demands on FDA. The added responsibilities of FDAAA Titles IV, V and IX pertaining to new drugs and biologics are now part of the process for the review of human drugs, and some of these additional technically challenging tasks must be conducted within the already existing review timeframes.

In addition to the statutory changes, the human drug review process is impacted by changes in industry operations that affect the content of NDA and BLA review. These include trends toward increasing numbers of distant, foreign-based clinical trials included in marketing applications, and similar trends in the drug manufacturing facilities named in marketing applications. FDA must plan for the time required to travel to these sites, as well as to conduct these inspections, within the same time frames that were established over a decade ago before manufacturing and clinical trials increasingly shifted to sites overseas.

Effective Information Management (IM) has become a critical element of FDA's strategy to address the challenges of new legislative mandates and industry shifts to multi-site worldwide operations. This requires building a modern, stable, and secure Information Technology (IT) infrastructure. As one component of this effort, FDA is in the process of migrating its servers to two consolidated data centers, one of which is located at the White Oak Campus in Silver Spring, Maryland. IT/IM costs represent a significant and growing component of PDUFA spending. For example, system security costs have been increasing with the growing presence and sophistication of cyber threats. In general, successful IT/IM investment and operations will require continuing focused oversight and strong technical, business, and contract management throughout the entire IT/IM system lifecycle. In addition, to take full advantage of the increasingly electronic format of submitted applications, the agency is also taking steps to help ensure that data can be submitted in a

standardized form that can be more easily accessed and analyzed by agency reviewers. IT/IM improvements are also needed to ensure that FDA can meet the timelines agreed to under PDUFA and implement drug safety requirements of FDAAA Title IX.

In addition, in FY 2010 FDA will have to initiate the steps required in FDAAA for the reauthorization of PDUFA, since the current authorization expires at the end of FY 2012.

PDUFA funding will continue to ensure that FDA rises to the challenge to meet the evolving demands of protecting the public health and the realities of the global situation.

Appendix A

CONDITIONS FOR ASSESSMENT AND USE OF FEES

The Federal Food, Drug, and Cosmetic Act (the Act) specifies three major conditions that must be met each year before prescription drug user fees may be collected and spent. A summary of these conditions and how FDA met them appears on page two. A more detailed description of each of these conditions is provided below, with an explanation of how FDA met the condition in FY 2009.

For making the calculations to determine if statutory conditions are met, an adjustment factor must be used. It is defined in Section 735(8) of the Act, as follows:

> The term "adjustment factor" applicable to a fiscal year is the Consumer Price Index for all urban consumers (all items, United States city average) for October of the preceding fiscal year divided by such Index for October 1996.

The consumer price index for October 2007, the October of the fiscal year preceding FY 2009, was 208.936. The consumer price index for October 1996 was 158.3. The result of dividing 208.9 by 158.336 is an adjustment factor of 1.319674 for FY 2009.

The **first condition** is based on Section 736(f)(1) of the Act. It states:

> In general, fees under subsection (a) shall be refunded for a fiscal year beginning after FY 1997 unless appropriations for salaries and expenses of the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) are equal to or greater than the amount of appropriations for the salaries and expenses of the Food and Drug Administration for the fiscal year 1997 (excluding the amount of fees appropriated for such fiscal year) multiplied by the adjustment factor applicable to the fiscal year involved.

This provision does not allow FDA to collect or spend user fees unless FDA's total Salaries and Expenses Appropriation (excluding user fees) each year are greater than or equal to FDA's FY 1997 Salaries and Expenses Appropriation (excluding user fees) multiplied by the adjustment factor. FDA's total FY 1997 Salaries and Expenses Appropriation (excluding user fees) was $819,971,000. Multiplying this amount by the adjustment factor of 1.319874, an adjusted FY 1997 Salaries and Expenses Appropriation (excluding user fees, and rounded to the nearest thousand dollars) is $1,082,258,000, rounded to the nearest thousand dollars.

In FY 2009, FDA's total Salaries and Expenses Appropriation (excluding user fees and excluding rent to GSA, which was also not included in the FY 1997 appropriation amount) was $1,883,539,000. Because the FY 2009 appropriation exceeded the FY 1997 adjusted amount, the first condition was met.

The **second condition** is stated in Section 736(g)(2)(A)(i): that fees "shall be retained in each fiscal year in an amount not to exceed the amount specified in Appropriation Acts, or otherwise made available for obligation, for such fiscal year…."

The President signed the Omnibus Appropriations Act that specified the amounts from prescription drug user fees in FY 2009 ($510,665,000) on March 11, 2009 (Public Law 111-8). Therefore, the second condition was met.

The **third condition** in Section 736(g)(2)(A)(ii), states that fees:

> shall only be collected and available to defray increases in the costs of the resources allocated for the process for the review of human drug applications (including increases in such costs for an additional number of full-time equivalent positions in the Department of Health and Human Services to be engaged in such process) over such costs, excluding costs paid from fees collected under this section, for fiscal year 1997 multiplied by the adjustment factor.

In FY 1997, FDA's actual obligation for the process for the review of human drug applications (excluding obligations paid from user fees) was $147,959,689, as reported in the FY 1997 Financial Report to Congress. Multiplying this amount by the FY 2009 adjustment factor of 1.319874, FDA's 1997 adjusted minimum spending for the human drug applications review process from appropriations (exclusive of user fees) was $195,288,000, rounded to the nearest thousand dollars, in FY 2009.

In FY 2009, FDA obligated $343,374,894 from appropriations for the human drug applications review process. Because $343,374,894 is greater than $195,307,000, the third condition was met.

The table below provides the amounts that FDA spent on the review process of human drug applications in FY 2008 and FY 2009, and the adjusted FY 1997 amount that had to be spent from appropriations. It also provides the amounts of these costs derived from appropriations and from user fees in each fiscal year.

FOOD AND DRUG ADMINISTRATION
OBLIGATIONS FOR THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS
As of September 30, 2009

	FY 1997 Adjusted for FY 2009	FY 2008	FY 2009
From Appropriations	$195,307,000	$263,113,555	$343,374,894
From User Fee Revenues		$450,786,835	$512,051,400
Total Obligations		$713,900,390	$855,426,294

Appendix B

EXEMPTIONS AND WAIVERS

Beginning in FY 1993, PDUFA directed FDA to waive or reduce fees in five different circumstances:

- when a waiver is necessary to protect the public health;
- when a fee is a significant barrier to innovation;
- when the fees paid exceed FDA's costs of reviewing a firm's human drug applications;
- when imposition of the fee creates an inequity between certain 505(b)(1) and 505(b)(2) human drug applications (this waiver provision was deleted in PDUFA III); and
- when a sponsor withdraws a pending human drug application after FDA has filed it, but before FDA has performed substantial work on the marketing application.

In addition, under PDUFA II, new exemptions from application fees were added beginning in FY 1998. These specific exemptions are automatic and do not require a waiver request. They include:

- human drug applications for designated orphan products (designated for rare diseases or conditions affecting fewer than 200,000 patients in the United States);
- supplemental applications for pediatric indications for use (statutorily repealed by section 5 of Public Law 107-109, effective January 4, 2002.)

Beginning in FY 1998, PDUFA II also provided a waiver, for certain small businesses, of the full application fee for the first application submitted. Before FY 1998, only half of the application fee was waived for small businesses.

The increased number of exemptions required by PDUFA II reduced the number of applications that require the payment of fees. Fees may be waived or reduced under the waiver provisions of the statute. Many of the application fee waiver requests FDA received through FY 1997 pertained to orphan products; since designated orphan products are now given automatic exemptions, the number of waiver requests for application fees has decreased substantially.

Additionally, beginning in FY 2008, PDUFA IV also provided exemptions for product fees and establishment fees for certain approved orphan products (See 21 USC 379h (k)).

The tables on the following page summarize the exemption and waiver actions taken by FDA for fees payable in the five most recent fiscal years.

EXEMPTIONS AND WAIVERS AS OF SEPTEMBER 30, 2009

Does not Include Data on FY 2010 Waivers Granted in FY 2009

Exempted Application Fees [1]

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Orphan Product	28.5	23.8	21.3	27.8	23.8
Previously Submitted	3.5	6.0	4.5	4.0	7.5
Total Exemptions	32.0	29.8	25.8	31.8	31.3
TOTAL Value of Exemptions	**$21,504,000**	**$22,830,150**	**$23,077,150**	**$37,401,500**	**$38,975,000**

Exempted Orphan Product and Establishment Fees (new in FY 2008)

Orphan Product Fee Exemptions	14	16
Value of Product Fee Exemptions	$910,420	$1,144,320
Orphan Establishment Fee Exemptions	5.24	7.45
Value of Establishment Fee Exemptions	$2,056,963	$3,169,869
Total Value of Product and Establishment Fee Exemptions	**$2,967,383**	**$4,314,189**

Waived Fees

APPLICATIONS [2]

Small Business Waivers	12.0	11.0	14.0	25.0	16.0
Miscellaneous Waivers (Includes PEPFAR)	12.0	13.0	14.0	21.0	10.0
Value of Waivers Approved	$16,128,000	$18,417,600	$25,093,600	$54,188,000	$32,427,200

PRODUCTS

Waivers Approved	32.0	22.0	23.8	14.0	9.0
Value of Waivers Approved	$1,334,720	$926,860	$1,184,344	$910,420	$643,680

ESTABLISHMENTS

Waivers Approved	17.0	12.2	12.1	6.5	3.0
Value of Waivers Approved	$4,453,991	$3,223,704	$3,782,272	$2,552,550	$1,276,800

TOTAL Value of Waivers Granted	**$21,916,711**	**$22,568,164**	**$30,060,216**	**$57,650,970**	**$34,347,680**
GRAND TOTAL--Exemptions & Waivers	**$43,420,711**	**$45,398,314**	**$53,137,366**	**$98,019,853**	**$77,636,869**

Source: Periodic waiver reports and application counts compiled by the CDER Associate Director for Policy and Fee-Exceed-Cost Waivers Reported by the Office of Financial Management

[1] Actual number of Exempted Applications received in full fee equivalents.

[2] Actual Number of Application Fee Waivers Granted--number of waived applications actually received may vary slightly

Appendix C

ALLOWABLE AND EXCLUDED COSTS FOR THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

Over 96 percent of amounts FDA obligates (contractually promises to pay) each year are expended within two years. Therefore, obligations represent an accurate measure of costs and are the basis of the costs reported in this document.

PDUFA, as amended, and the related House of Representatives Reports 102-895 and 107-481 (House Reports), define the process for the review of human drug applications and the costs that may be included in that process. Using these definitions, the further refinements described below, and the methodologies described in this report, FDA identified those activities that were applicable to the process for the review of human drug applications.

User Fee Related Costs

Section 735(6) of the Act defines in general terms the activities necessary for the review of human drug applications (the "human drug review process"). In summary, costs related to the following process activities have been attributed to the process for the review of human drug applications:

- All investigational new drug (IND) review activities, including amendments;
- All review activities for NDAs, BLAs, including supplements and amendments;
- Regulation and policy development activities related to the review of human drug applications;
- Development of product standards for products subject to review and evaluation;
- Meetings between FDA and the sponsor of a covered application or supplement;
- Review of labeling prior to approval of a covered application or supplement and the review of the initial pre-launch advertising;
- Review of post-marketing studies and clinical trials that have been agreed to by sponsors as a condition for approval;
- Inspections of facilities undertaken as part of the review of pending applications or supplements;
- Lot release activities for covered biological products;
- Assay development and validation to ensure batch-to-batch consistency and reliability for covered biological products;
- Monitoring of clinical and other research conducted in connection with the review of human drug applications;
- User Fee Act implementation activities;
- Research related to the human drug review process; and
- Postmarket safety activities with respect to drugs approved under human drug applications or supplements, including the following activities: collecting,

All user fee related costs represented by the above activities are collectively referred to in this report as costs for the process for the review of human drug applications.

Section 735(7) of the Act defines the "costs of resources allocated for the process for the review of human drug applications" as the expenses incurred in connection with this process for:

(A) officers and employees of the FDA, contractors of the FDA, advisory committees, and costs related to such officers, employees, committees and contracts;
(B) management of information, and the acquisition, maintenance, and repair of computer resources;
(C) leasing, maintenance, renovation, and repair of facilities and acquisition, maintenance, and repair of fixtures, furniture, scientific equipment, and other necessary materials and supplies; and
(D) collecting user fees under Section 736 of the Act and accounting for resources allocated for the review of human drug applications and supplements.

User Fee Excluded Costs

The Act excludes costs related to the following:

Excluded Products

- Generic drugs
- Over-the-counter drugs not associated with an NDA or NDA supplement
- Large volume parenteral drug products approved before September 1, 1992
- Allergenic extract products
- Whole blood or a blood component for transfusion
- In vitro diagnostic biologic products
- Certain drugs derived from bovine blood

Excluded Process Activities

- Enforcement policy development not related to Sections 505(o) and (p) of the Act
- Post-approval compliance activities not related to the enforcement of Sections 505(o) and (p) of the Act
- Advertising review activities once marketing of the product has begun
- Inspections unrelated to the review of covered applications, unless undertaken for the enforcement of Sections 505(o) and (p) of the Act
- Research unrelated to the human drug review process

These inclusions and exclusions required accounting for a newly created subset of FDA activities after the fact. It was necessary to develop and implement a methodology that would allow the agency retrospectively to capture the FY 1992 costs for the newly defined "process for the review of human drug applications," and apply that same methodology for future years. In 1995, Arthur Andersen & Company independently reviewed FDA procedures for doing this and found the methodologies reasonable.

Appendix D

DEVELOPMENT OF COSTS FOR THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

GENERAL METHODOLOGY

The costs associated with the process for the review of human drug applications are based on obligations recorded within FDA's Center for Drug Evaluation and Research (CDER), the Center for Biologics Evaluation and Research (CBER), the Office of Regulatory Affairs (ORA), and the Office of the Commissioner (OC). These organizations correspond to the cost categories presented on the Statement of Costs for the Process for the Review of Human Drug Applications as follows:

Cost Category	FDA Organization
Costs for the Review of New Drug Applications (NDAs), Biologic License Applications (BLAs), and Supplements	CDER
Costs for the Review of BLAs and Supplements	CBER
Field Inspection and Investigation Costs	ORA
Agency General and Administrative Costs	OC

The costs were accumulated using time-reporting systems in CDER, CBER, and ORA, and were extrapolated for OC. Using the definitions of costs and activities included in the "process for the review of human drug applications" in the Act, a portion of the costs within each of the four organizations listed above was identified as part of the human drug review process.

CENTER COSTS

Costs are accumulated in CDER and CBER in cost centers corresponding to the organizational components (usually divisions) within the Centers. Most FDA components involved in the human drug review process perform a mixture of activities--some included in the definition of the process for the review of human drug applications, and some not included. These components fall into three categories: 1) direct review and laboratory components; 2) indirect review and support components; and 3) center-wide expenses. The allocation of costs for the three categories is discussed below.

Direct Review and Laboratory Components

Employees in all components of CDER and CBER, other than those noted below as Center indirect review and support components, reported their time for eight weeks during FY 2009 in activities that could be used to differentiate between time spent on the process for the review of human drug applications and all other time.

Both CDER and CBER time-reporting systems were modified after the enactment of each PDUFA reauthorization, so that time could be reported in activities that could be separated into allowable and excluded activities with respect to the process for the review of human drug applications, as defined in PDUFA and as further explained in Appendix C. This method for determining allowable and excluded costs for PDUFA direct review and laboratory costs has been used consistently, with only minor modifications, since 1993, when costs were initially measured by Arthur Andersen & Company. The CBER time reporting system collects on-line time reports for all employees, other than management and administrative support personnel, for a 2-week period each quarter of the fiscal year. The enhanced system reports time for 58 possible functional activities, by seven product classes.

CDER also conducts an on-line time-reporting survey. It captures the expenditure of time by all employees, other than management and administrative support personnel, on activities that are part of the process for the review of human drug applications and all CDER mission-oriented activities of each employee within the Center for two 4-week periods—one in each half of the fiscal year.

FDA Centers are payroll-intensive organizations – about 60 percent of all FDA funds pay for employee salaries and benefits, and almost all other costs are directly supporting these employees. Thus the average percentage of time reported each year during this 8-week period (two weeks each quarter for CBER, and four weeks semiannually for CDER) as having been expended on drug review process activities for each cost center is then applied to all costs incurred for that cost center for the entire fiscal year. This provides an estimate of the costs for each cost center that were part of the process for the review of human drug applications.

Center Indirect Review and Support Components

Indirect review and support components provide the infrastructure for the review process. In CDER, these components include portions of the Office of the Center Director, the Office of Regulatory Policy, the Office of Business Process Support, the Office of Management, the Office of Training and Communications, the Office of Medical Policy, the Office of Executive Programs, and the Office of Compliance. In CBER, these components include portions of the Office of the Center Director, Office of Management, Office of Information Technology, and the Office of Communications, Outreach, and Development. Most employees of these components do not report their time.

The time of the management and administrative support personnel supporting the process for the review of human drug applications is assumed to be the average percentage time of all

Center employees in direct review and laboratory components who reported their time. Thus the total average percentage of time reported each year during this 8-week period as having been expended on drug review process activities for all direct review and laboratory components was then applied to all costs incurred for the entire fiscal year by the indirect review and support components.

Center-Wide Expenses

A number of Center-wide expenses are paid from central FDA accounts rather than charged directly to a specific Center. These costs include rent for facilities that house drug review staff, telecommunications and utility costs, some computer equipment and support costs, facilities repair and maintenance, and some extramural and service contracts. Many of these costs were traced back to the specific division that generated the cost and were assigned the user fee percentage calculated for the division to which the expenditure related. For the costs that benefited the Center as a whole and could not be traced to a specific division, a weighted average user fee percentage was calculated based on the level of time-reporting component costs for the process for the review of human drug applications divided by the total costs of these components.

In support of the President's Management Agenda and Secretarial Goal of "One-HHS," FDA consolidated administrative functions from the Centers and the Office of Management (including facilities, procurement, finance, EEO, and IT services) into the Office of Shared Services in FY 2004. The goal of implementing the Office of Shared Services is to keep the administrative functions related to the review costs more efficient.

In the FY 2009 financial report, the resources that were previously provided by the Centers, but are now provided by the Office of Shared Services, are reported as if they were still performed by the Centers, in order to make the FY 2009 report comparable with the reports of previous years.

CENTER TIME REPORTING RESULTS FOR FY 2009

The time reporting systems operated by CBER and CDER indicated that 68 percent of all time spent in CBER and 80 percent of all time spent in CDER in FY 2009 was dedicated to the process for the review of human drug applications as defined in PDUFA.

FIELD INSPECTION AND INVESTIGATION COSTS

ORA incurs all field inspection and investigation costs. ORA costs are incurred in both district offices (the "field") and headquarters support offices and are tracked through the use of the Field Accomplishment and Compliance Tracking System (FACTS). FACTS is a time and activity tracking system which captures time in a variety of categories, including pre-approval inspections of manufacturing facilities, investigations of clinical studies, and analytical testing of samples--which are included in the process for the review of human drug applications.

Total direct hours reported in FACTS are used to calculate the total number of staff years required by ORA to perform these activities. In addition to the direct time, an allocation of support time is also included to represent the work done by the ORA administrative and management personnel. The agency then applies the total number of user fee-related staff years to the average salary cost in ORA to arrive at ORA user fee related salary costs. The final step is to allocate ORA obligations for operations and rent to the human drug review process based upon the ratio of user fee-related staff years to total ORA staff years. The following table summarizes the calculation of ORA costs for the review of human drug applications for FY 2008 and FY 2009.

FOOD AND DRUG ADMINISTRATION
OFFICE OF REGULATORY AFFAIRS
COSTS OF THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS
As of September 30, 2008 and 2009

Cost Component	FY 2008	FY 2009
Staff Years Utilized	146	194
ORA Average Salary and Benefits	$109,685	$107,401
Salary and Benefits	$16,014,010	$20,835,794
Operations, Rent, and Shared Services	$11,797,029	$15,673,286
TOTAL	**$27,811,039**	**$36,509,080**

ORA costs for the process for the review of human drug applications described above include total process costs, including costs paid from appropriations and costs paid from fee revenues. The cost per FTE declined slightly in FY 2009 because ORA hired a large number of entry-level personnel over the year. The number of FTE is higher because of increased assignments of drug review process work from the centers.

AGENCY GENERAL AND ADMINISTRATIVE COSTS

The agency general and administrative costs are incurred in the FDA's OC. At the end of FY 2009, OC was comprised of the following offices:

- Immediate Office of the Commissioner
- Office of the Chief Counsel
- Office of the Chief of Staff
- Office of the Administrative Law Judge
- Office of Equal Employment Opportunity and Diversity Management
- Office of International Programs
- Office of Administration
- Office of Policy, Planning and Budget
- Office of Special Medical Programs
- Office of Legislation

- Office of the Counselor to the Commissioner
- Office of Women's Health
- Office of Foods
- Office of the Chief Scientist
- Office of External Affairs

OC costs applicable to the process for the review of human drug applications were calculated using a method prescribed by the Division of Cost Determination Management, Office of Finance, Office of the Assistant Secretary for Resources and Technology, Office of the Secretary, HHS. The method uses the percentage derived by dividing total OC costs by the total salary obligations of the agency, excluding the OC. That percentage is then multiplied by the total salaries (excluding benefits) applicable to the process for the review of human drug applications in CDER, CBER, and ORA to arrive at the total General and Administrative Costs.

Using this process, $47,259,909 and $63,138,931 in general and administrative obligations were dedicated to the human drug review process in FY 2008 and FY 2009, respectively. They are the total costs, including the funds obligated both from appropriations and user fees. The agency general and administrative obligations in FY 2009 accounted for about 7.4 percent of the total costs of the human drug application review process. This is up slightly from the 6.6 percent and 7.0 percent reported for FY 2008 and FY 2007, respectively. This percentage is still substantially below the high point of 10.4 percent reported for general and administrative obligations in the FY 1998 PDUFA Financial Report.